

## **REMARKS**

### **Status of case**

Claims 15-18, 22-30, 32-43 and 66-68 are currently pending in this case.

### **Objection**

Claim 22 was objected to for incorrect punctuation. Applicants amend claim 22 to overcome the objection.

### **Rejection under 35 U.S.C. §112**

Claims 17 and 34 are rejected under 35 U.S. C. §112, second paragraph. In particular, claim 17 was rejected for lacking antecedent basis for the term “the user” and “the options”. The Office Action did not provide any specific basis for rejection of claim 34 under 35 U.S. C. §112, second paragraph. Therefore, Applicants only amend claim 17 to overcome the rejection.

### **Rejection under 35 U.S.C. § 101**

Claims 15-18, 22-30, 32-43 and 66-68 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Applicants amend the rejected claims as appropriate to overcome the rejection.

### **Rejection under 35 U.S.C. §§ 102, 103**

Claims 15-18, 22-26, 28-33, 35-43, and 66 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,018,722 (Ray). Claims 27, 34 and 67 are rejected under 35 U.S. C. §103(a) as being unpatentable over Ray.

#### **Claim 15**

Claim 15 was rejected as anticipated by the Ray reference. Applicants respectfully contend that claim 15 distinguishes over the Ray reference for several reasons.

As a general matter, the present invention as claimed is directed to a funds investment system and method wherein the funds are pooled. See claim 15 (“A funds investment system for managing funds that have been allocated to a plurality of asset manager programs through a

plurality of intermediate allocations”). This is in contrast to the Ray reference, which is entirely focused on providing investment management for individual investors. For example, the Ray reference discloses a system where “there are no pooled funds as with mutual funds which ‘pool’ the assets of a number of shareholders”. Col. 1, lines 59-60. Moreover, the Ray reference discloses that “This power tool enables untrained individuals to manage their portfolio with superior expertise, integrity and single minded devotion to achieving their personal objectives, and avoids the need for investors to interact with a sales person.” Col. 2, lines 10-14 (emphasis added). Thus, the Ray reference actually teaches away from managing pooled funds as presently claimed.

Moreover, claim 15 is directed to a particular system for rebalancing funds held by a plurality of asset manager programs. In particular, claim 15 recites:

- a receiver for receiving data relating to the value of funds held by the plurality of asset manager programs;

- determining the value of intermediate allocations that represent the distribution of funds to individual asset manager programs according to the value data received;

- comparing the determined intermediate allocations with the predefined rules for same; and

- determining a new allocation of funds to asset managers in accordance with the predefined rules for intermediate allocations in the event that a variance greater than a predetermined amount exists between the determined intermediate allocation and the predefined rules for same.

The rebalancing may occur as a result of a sufficiently significant change in the value of funds held by assets managers according to one or more predefined rules, as recited above. In effect, the value of the funds drives determining the value of intermediate allocations, comparing the intermediate allocations with the predefined rules, and determining a new allocation of funds.

In contrast, the Ray reference does not teach or even suggest any type of rebalancing of an investment portfolio which occurs in the same way as recited in claim 15 – namely a rebalancing that is driven by the value of the funds. Instead, the Ray reference is entirely focused on providing buy and sell recommendations, based on external market conditions, to an individual investor. In other words, the Ray reference only decides whether to reallocate assets in response to buying or selling, as taught by the following excerpts:

“Daily analysis of every asset in every portfolio permits rapid and unbiased response to portfolio or environmental conditions”. Col. 1, line 67 – col. 2, line 2.

“after viewing recommended transactions, research recommendations, personal account information, electronic mail or performing transaction, the customer may decide whether to invest, print reports or exit the system. If the customer chooses to invest, transactions are entered by the customer and provided to the financial service provider for processing.” Col. 3, lines 19-25.

“Specifically selected securities and instruments such as stocks, corporate and municipal bonds, mutual funds, certificates of deposit, Government securities, money markets, etc are individually bought and sold for each account at the proper time and price”. Col. 2, lines 43-48.

“output of the Expert Account Management process 110 is Buy and Sell Orders”. Col. 4, lines 3-5.

“current assets held in each customer account are thoroughly evaluated on a daily basis. Accounts are initially evaluated by comparing changing market values with asset allocation model 705. Account asset allocation models are evaluated daily based upon changing economic environment 710 of FIG 7. Adjusted asset allocation models are compared daily to current account assets 725. Account assets are evaluated to determine if any assets have a “SELL” signal 735. Those assets which are identified as having a “SELL” signal generate “SELL” orders 740.” Col. 8, line 63 – col. 9, line 2.

As shown by the above-excerpts, the Ray reference discloses a system that changes the allocation of assets – however this change in allocation of assets occurs only where selling (and potentially buying) of assets is indicated by the system based on external market conditions. As discussed above, the reallocation of assets as claimed is not dependent on selling (or buying) of assets. Instead, the reallocation is dependent on the value of the assets and in turn on the comparison of predetermined rules with the intermediate allocations (as determined by the value of the assets).

Finally, as a result of the claimed rebalancing, buy and sell decisions are made externally (entrusted to someone like an asset manager) and are based on market conditions. In contrast, in the Ray reference, it is the investor that is involved in the buy or sell decisions, which results in the rebalancing. For at least these reasons, claim 15 is patentable over the cited art.

## **Claim 22**

Claim 22, rejected as anticipated by the Ray reference, recites the following:

code for receiving data relating to the value of funds held by the plurality of asset manager programs;

code for determining the intermediate allocations representing the distribution of funds to individual asset manager programs according to the value data received;

code for comparing the determined intermediate allocations with the pre-defined rules for same and determining whether a variance greater than a predetermined amount exists between the determined intermediate allocation and the pre-defined rules for same; and

code for calculating a new allocation of funds to asset managers in accordance with the predefined rules for intermediate allocations.

As discussed above, the Ray reference is not directed to a funds investment system wherein the funds are pooled, and does not teach the rebalancing as claimed. For at least these reasons, claim 22 is patentable over the cited art.

#### **Claim 26**

Claim 26, rejected as anticipated by the Ray reference, recites the following:

performing a plurality of intermediate allocations using at least one processor through a network of allocations, the most subordinate allocations representing the allocation of funds to an asset manager program with all superior intermediate allocations effected external to any asset manager program, each intermediate allocation according with predefined rules supplied to the system by the user over the communications network and repeating the step of performing intermediate allocations until all available funds are allocated with asset manager programs.

As discussed above, the Ray reference is not directed to a funds investment system wherein the funds are pooled, and does not teach the rebalancing as claimed. For at least these reasons, claim 26 is patentable over the cited art.

#### **Claim 30**

Claim 30, rejected as anticipated by the Ray reference, recites the following:

performing a plurality of intermediate allocations using at least one processor each intermediate allocation according with predefined rules supplied to the system by the user over the communications network and repeating the step of performing intermediate allocations until all available funds are allocated with asset manager programs:

wherein the method includes the step of receiving from asset managers, to whom funds have been allocated, a valuation of the invested funds in each of the asset manager programs and determining a value at each superior intermediate allocation, the value being determined from valuations at subordinate allocations.

As discussed above, the Ray reference is not directed to a funds investment system wherein the funds are pooled, and does not teach the rebalancing as claimed. For at least these reasons, claim 30 is patentable over the cited art.

**Claim 40**

Claim 40, rejected as anticipated by the Ray reference, recites the following:

obtaining data relating to the value of funds allocated to the plurality of asset manager programs;

calculating, using at least one processor, the intermediate allocations representing the distribution of funds to individual asset manager programs according to the value data obtained;

comparing, using the at least one processor, the calculated intermediate allocations with the pre-defined rules for same; and

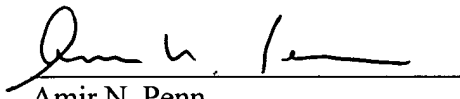
in the event that a predefined variance between the calculated intermediate allocation and the predefined rule for same is exceeded, calculating a new allocation of funds to asset managers in accordance with the pre-defined rules for intermediate allocations.

As discussed above, the Ray reference is not directed to a funds investment system wherein the funds are pooled, and does not teach the rebalancing as claimed. For at least these reasons, claim 40 is patentable over the cited art.

**SUMMARY**

Applicants respectfully request the Examiner grant early allowance of this application. The Examiner is invited to contact the undersigned attorney for the Applicants via telephone if such communication would expedite this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Amir N. Penn", is written over a horizontal line.

Amir N. Penn  
Registration No. 40,767  
Attorney for Applicants

BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, ILLINOIS 60610  
(312) 321-4200